

Order

**Michigan Supreme Court
Lansing, Michigan**

May 2, 2008

Clifford W. Taylor,
Chief Justice

134665
& (69) (73)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

FRANK J. TOMECEK, JR., and
JANIS H. TOMECEK,
Plaintiffs-Appellees,

v

SC: 134665
COA: 258907
Berrien CC: 02-003707-CH

ANDREW LUCIAN BAVAS, JOYCE
BAVAS, INEZ HILDEGARD BAVAS,
STANLEY FRANCIS STASCH, JULIA
STASCH, MARTHA STASCH,
PATRICIA M. CURTNER, TIMOTHY V.
McGREE, PETER A. STRATIGOS,
ALICE M. STRATIGOS, PAMELA
KRUEGER, DEVEREAUX BOWLY, JR.,
DAVID N. DERBYSHIRE, ELLEN R.
LA FOUNTAIN, JONATHAN RODGERS,
ROYAL KENNEDY RODGERS, LEE
STAHL, III, and SUSAN STAHL,
Defendants-Appellants,

and

INDIANA MICHIGAN POWER COMPANY,
d/b/a AMERICAN ELECTRIC POWER
COMPANY, INC., MICHIGAN
DEPARTMENT OF LABOR AND
ECONOMIC GROWTH, and BERRIEN
COUNTY DRAIN COMMISSIONER,
Defendants-Appellees,

and

DANIEL JOHNSON, SCOTT LOESS,
KATHLEEN LOESS, JANE HENKLE,
RICHARD CRAGG, LOIS ZYER,
ARTHUR C. MERTZ REVOCABLE
TRUST, PETER LEVY, BENITA LEVY,
LAKESIDE PROPERTY OWNERS,

CHIKAMING TOWNSHIP, ROBERT
 FORKER, JR., NEW BUFFALO SAVINGS
 BANK, FIFTH THIRD BANK, SHORELINE
 BANK, SEMCO ENERGY, INC., SEMCO
 ENERGY GAS COMPANY, SBC AMERITECH
 CORPORATION, MICHAEL L. JONES,
 LAURA L. AVERY, and JULIA E. PIETRAS,
 Defendants.

On order of the Court, the miscellaneous motion and the motion to file amicus curiae brief are GRANTED. The application for leave to appeal the July 3, 2007 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether an action under the Land Division Act, MCL 560.101, *et seq.*, can be used to burden existing, substantive property rights; (2) whether this Court should recognize an easement by necessity for utilities; and (3) whether an easement by necessity may be recognized when purchasers had notice of a restrictive covenant barring any such easement in the absence of certain conditions.

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 2, 2008

Corbin R. Davis

Clerk